



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)
(petitioner's address)

DECISION

MDV-38/43244

PRELIMINARY RECITALS

Pursuant to a petition filed January 31, 2000, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Marinette County Dept. of Human Services in regard to deny Medical Assistance (MA), a hearing was held on April 21, 2000, at Marinette, Wisconsin. Hearings previously set for February 17, 2000 and March 29, 2000 were rescheduled at the petitioner's request. With the agreement of all parties, a telephone hearing was conducted on April 21, 2000.

The issue for determination is whether the petitioner met the MA eligibility requirements to make him eligible for placement on the Community Options Program (COP) – Waiver waiting list.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented by:

Attorney Robert C. Anderson
148 West Hewitt
Marquette, MI 49855-3533

Respondent:

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Kay Piasecki, ESS
Marinette County Dept Of Human Services
Wisconsin Job Center Suite B
Marinette, WI 54143

EXAMINER:

Kenneth P Adler
Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx) is a resident of Marinette County.
2. On October 1, 1999 a Community Options Program (COP) Waiver assessment was completed for petitioner. While he was determined physically eligible based upon his home-care needs, financial eligibility under the Medical Assistance (MA) guidelines was questionable.
3. On October 1, 1999 the (petitioner) Family Trust, A Revocable Trust Agreement, was created. Exhibit 5
4. On October 12, 1999 petitioner quit-claimed the family farm to the (petitioner) Family Trust. The Quit Claim Deed completed on that date specifically states the transfer occurred for "NO ACTUAL CONSIDERATION." The fair market value of the property is at least \$66,000. Exhibit 4
5. The county agency requested verification of petitioner's financial eligibility. Verification of assets and income were requested returned to the agency no later than November 18, 1999. Exhibit 18
6. As of November 18, 1999 petitioner had not returned complete verification of financial status.
7. On November 19, 1999 the county agency issued a notice of decision stating petitioner's application had been denied due to failure to supply requested information within 30 days. The notice included appeal rights. Exhibits 6, 19
8. On November 22, 1999 petitioner's son contacted the county agency asking what could be done. He chose to make a new application. At that time the county agency issued another letter informing petitioner he had 30 days to submit verification of financial eligibility. The deadline for submission of the requested verification was December 22, 1999. Exhibits 6, 20
9. On December 17, 1999 the county agency received a signed Declaration of Income and Assets listing petitioner's assets at \$3,793.59 (savings - \$3,149.15; checking - \$644.44). The petitioner stated he "would still like to use the credit union account for funeral expenses if possible." As petitioner exceeded the \$2,000 MA asset limit, he was not financially eligible to be placed on the COP-W waiting list. Exhibit 2
10. On December 21, 1999 the county agency issued a notice of decision stating petitioner's MA application was denied due to excess assets and divestment. Fair hearing rights were included in that notice. Exhibit 21
11. On January 17, 2000 petitioner sent a letter to the county agency responding to the December 21st denial and questioning how the county agency had arrived at the figure of \$3,793.59 for countable assets. That number was contained in the Declaration of Income & Assets completed on December 16, 1999 (Exhibit 2). Exhibit 12
12. On January 31, 2000 petitioner filed an appeal with the Division of Hearings & Appeals.
13. On February 3, 2000 the county agency issued a letter stating its conclusion that the transfer to the family farm was a divestment, resulting in a penalty period of 6 months.
14. On April 4, 2000 petitioner purchased a burial casket for \$3,180.81. There is no verification in the file that the burial casket was purchased with the funds in the checking and savings accounts. At this time his liquid assets were reduced below \$2,000.

DISCUSSION

The issue in this case concerns the petitioner's financial eligibility for placement on the COP-W waiting list. There are two questions: (1) On what date did the petitioner first verify eligibility for MA thus making him eligible to be placed on the COP-W waiting list, and (2) Did the county agency correctly deny the November 22, 1999 application for excess assets?

The COP-W program is mandated by Wis. Stat. § 46.27, and its policies are set out in the Department's Medical Assistance (MA) Waivers Manual. As an MA-Waiver program, the financial eligibility criteria are the same as the state Medical Assistance (MA) program. The MA asset limit is currently \$2,000. Wis. Stat. § 49.47. The date an individual's liquid assets are reduced below \$2,000 is the date which that individual becomes MA eligible.

An individual is not eligible for placement on the COP-W waiting list until such time as he verifies his eligibility for MA. If verified within 30 days from application, the application date will determine the placement date on the waiting list. If not verified within 30 days, the application will be denied, and a new application must be filed. The individual is again given 30 days from the new application date to submit verification of MA eligibility.

The county agency asserts the petitioner remained above the \$2,000 asset level when the December 21, 1999 negative notice was issued stating the application was denied based upon excess assets. According to the information in the record, it appears as though the amount in the petitioner's checking and savings accounts exceeded \$2,000 until April, 2000. However, the record does not contain verification that the checking and savings accounts were used to pay for the burial casket. A bank statement showing the balance below \$2,000 or a cancelled check drawn on that account would be necessary to verify that information.

The petitioner's representative confirms that the petitioner's assets totaled \$3,793 on December 21, 1999, but asserts the funeral account *to be purchased* would have reduced the assets below the \$2,000 limit. However, the documentation submitted indicates the burial casket was purchased on April 4, 2000. Therefore, the petitioner's assets were apparently not reduced below \$2,000 until that date.

The petitioner's representative asserted he was not apprised of the basis for the determination that the petitioner's liquid assets were \$3,793.59 and was "left in the dark" until a March 31, 2000 letter issued by the county agency explained the determination. See representative's letter dated April 19, 2000. However, the Declaration submitted by his client on December 17, 1999 clearly lists that amount as the combination of funds in the checking and savings accounts. In addition, the letter from the county agency to the petitioner dated December 21, 1999 also references the Declaration of Income and the \$3,793.59 amount. See Exhibits 2, 21

In addition, the petitioner's representative asserts the county agency should be estopped from viewing the \$3,793.59 as an available asset as the county agency advised the petitioner's representative *not* to spend down that amount as the county representative would arrange for funding of a qualified funeral account to reduce assets below \$2,000. However, the county agency representative convincingly testified she would never have stated such as it is never appropriate for the agency to handle a client's funds. The petitioner's representative's testimony was not as convincing as to his understanding of the matter, especially when viewed in conjunction with the statement in Exhibit 2 where the representative stated he would like to use the account for funeral expenses if possible. He was obviously aware of the \$2,000 asset limit and the possibility of transfer of some of the funds to a funeral account. Therefore, I am not persuaded this is an example of a situation where equitable estoppel is applicable.

I should note even if I did find equitable estoppel were applicable, this office has consistently held administrative law judges (f/k/a fair hearing officers) do not possess equitable powers. Therefore, even if I were to rule in the petitioner's favor on the equitable estoppel issue, I would not be able to grant a remedy pursuant to such a ruling.

Based upon all of the above, I must conclude the county agency correctly denied the November 22, 1999 MA application as the petitioner exceeded the \$2,000 asset limit based upon \$3,793.59 in liquid assets. Those assets were not reduced as of the December 21, 1999 denial.

Therefore, it is not necessary to review the divestment issue. For while this was listed as a reason for denying the November 22nd application, the fact is the petitioner's assets were not reduced as of the December 21, 1999 application. The issue before me concerns the November 22nd application. The petitioner clearly was not financially eligible at that time.

The petitioner may make another application, with requested MA backdating for three months prior to application. This would reach back to April, 2000 – the time at which it appears the petitioner's liquid assets were reduced below \$2,000. However, at that time the divestment may again become an issue. At this time, however, it is not ripe for adjudication until another application is made and a decision issued.

CONCLUSIONS OF LAW

1. That petitioner exceeded the MA asset limit of \$2,000 at the time of the November 22, 1999 MA application.
2. That petitioner was not eligible to be placed on the COP-W waiting list until he was financially eligible for MA.
3. That the county agency correctly denied petitioner's November 22, 1999 MA application.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2001.

Kenneth P Adler
Administrative Law Judge
Division of Hearings and Appeals
26/KPA

cc: MARINETTE COUNTY DEPT OF HUMAN SERVICES
DHFS - Susan Wood
Robert C. Anderson-